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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
Plaintiff-Respondent,) NO. 38568
)
vs.)
)
MAURICE ANTHONY STAPLES,)
)
Defendant-Appellant.)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ELMORE**

**HONORABLE RICHARD D. GREENWOOD
District Judge**

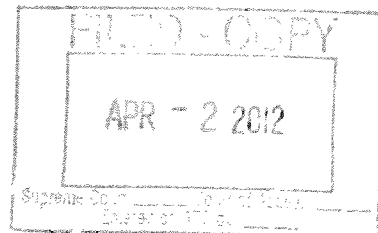
**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

**PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division**

**LORI A. FLEMING
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

**SHAWN F. WILKERSON
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712**



**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature of the Case

Maurice Anthony Staples appeals from the district court's orders relinquishing jurisdiction and denying his Rule 35 motion for reduction of the unified sentence of 10 years, with five years fixed, imposed upon his guilty plea to felony domestic battery.

Statement of Facts and Course of Proceedings

While arguing with his fiancée, Patsy Garcilazo, about allegations that he was cheating on her, Staples twisted Patsy's wrist and pushed her over a couch, causing her to hit her head on a coffee table. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.4-5.) Patsy followed Staples outside and asked him to return her house keys. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.3, 5.) Staples responded by grabbing Patsy's neck, strangling her and throwing her to the ground. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.3-5.) Patsy got up, took Staples' keys and ran inside her apartment. (5/29/08 PSI, p.2; Domestic Battery Eval., p.5.) Staples followed Patsy and again pushed her over the couch, then held a knife to her throat and threatened to kill her. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.5, 12-13.) Staples then left the apartment, but not before kicking and breaking the door. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.4-6.) Patsy's five-year-old daughter was present when Staples threatened Patsy with the knife, and she saw Staples kick in the door. (Domestic Battery Eval., pp.5-7.)

The state charged Staples with attempted strangulation, aggravated assault, domestic assault in the presence of a child and malicious injury to property. (R., pp.35-37.) Pursuant to plea agreement, the state amended the first count of the information to charge domestic battery with traumatic injury (felony domestic battery). (R., pp.65-66, 69-71.) Staples pled guilty to that charge and the state dismissed remaining counts. (R., pp.65-67, 90.) The court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.88-94.) Following the period of retained jurisdiction, the district court suspended the balance of Staples' sentence and placed him on probation for nine years. (R., pp.104-09, 111-18.)

Less than nine months later, in December 2009, Staples' probation officer prepared a report of violation, alleging that Staples had violated the terms and conditions of his probation by being removed from New Directions Aftercare for failing to attend required sessions, failing to enroll in a court-ordered domestic violence treatment program, being cited for driving without privileges in September 2009, failing to pay the costs of supervision, and changing residences without permission and without notifying his probation officer of his whereabouts in November 2009. (R., pp.137-40; see also R., pp.119-20 (Motion For Warrant For Probation Violation, filed Feb. 1, 2010).) Staples admitted to having violated his probation by being removed from New Directions Aftercare, failing to enroll in domestic violence treatment, and changing residences without permission, and the state dismissed the remaining allegations. (R., pp.144-45.) The district court revoked Staples' probation, ordered the underlying sentence

executed and retained jurisdiction a second time. (R., pp.147-52.) At the conclusion of the second retained jurisdiction period, the district court relinquished jurisdiction and ordered Staples' sentence executed. (R., pp.158-62.) Staples filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (R., pp.163-65, 180-83.) Staples filed a notice of appeal timely only from the court's orders relinquishing jurisdiction and denying his Rule 35 motion. (R., pp.166-69, 186-89.)

ISSUES

Staples states the issues on appeal as:

1. Did the Idaho Supreme Court deny Mr. Staples due process and equal protection when it denied his Motion to Augment with the requested transcripts?
2. Did the district court abuse its discretion when it relinquished jurisdiction?
3. Did the district court abuse its discretion when it denied Mr. Staples' I.C.R. 35 motion requesting leniency in light of new information indicating that his family is in need of his financial support?

(Appellant's brief, p.3.)

The state rephrases the issues on appeal as:

1. Has Staples failed to establish that the Idaho Supreme Court violated his constitutional rights by denying his motion to augment the appellate record with irrelevant transcripts?
2. Has Staples failed to establish that the district court abused its discretion, either by relinquishing jurisdiction or by denying Staples' Rule 35 motion for reduction of the sentence imposed upon his guilty plea to felony domestic battery?

ARGUMENT

I.

Staples Has Failed To Establish That The Idaho Supreme Court Violated His Constitutional Rights By Denying His Motion To Augment The Appellate Record With Irrelevant Transcripts

A. Introduction

After the appellate record was settled, Staples filed a motion to augment with various items, including as-yet prepared transcripts of the April 19, 2010 hearing at which Staples admitted to having violated his probation and the August 2, 2010 disposition hearing at which the district court revoked Staples' probation and ordered a second period of retained jurisdiction. (Motion To Augment And To Suspend The Briefing Schedule And Statement In Support Thereof (hereinafter "Motion To Augment"), filed July 14, 2011.¹) The Idaho Supreme Court denied Staples' motion to augment with the requested transcripts but granted the motion insofar as it sought augmentation of the record with documentary evidence submitted in connection with Staples' sentencing and his Rule 35 motion. (Order Augmenting The Record, filed September 6, 2011.)

Staples now contends that, by denying his motion to augment the appellate record with the requested transcripts, the Idaho Supreme Court has violated his constitutional rights to due process and equal protection and has effectively denied him effective assistance of counsel on appeal. (Appellant's

¹ Staples filed a timely objection to the record in the district court (see Objection To The Record, filed June 9, 2011), but he withdrew that objection to pursue a determination by the Idaho Supreme Court whether the requested transcripts were necessary to provide an adequate record on appeal (see Motion For Leave To Withdraw Objection To The Record And Vacate Hearing, filed July 6, 2011; Motion To Augment, p.2).

brief, pp.4-13.) Staples has failed to establish a violation of his constitutional rights, however, because he has failed to show that the requested transcripts (of hearings held in connection with a prior probation violation) are even relevant to, much less necessary for resolution of, the only issues over which this Court has jurisdiction on appeal.

B. Standard Of Review

The standard of appellate review applicable to constitutional issues is one of deference to factual findings, unless they are clearly erroneous, but free review of whether constitutional requirements have been satisfied in light of the facts found. State v. Bromgard, 139 Idaho 375, 380, 79 P.3d 734, 739 (Ct. App. 2003); State v. Smith, 135 Idaho 712, 720, 23 P.3d 786, 794 (Ct. App. 2001).

C. Staples Has Failed To Show Any Constitutional Entitlement To The Requested Augmentations

A defendant in a criminal case has a right to “a record on appeal that is sufficient for adequate appellate review of the errors alleged regarding the proceedings below.” State v. Strand, 137 Idaho 457, 462, 50 P.3d 472, 477 (2002) (citing Draper v. Washington, 372 U.S. 487 (1963); Lane v. Brown, 372 U.S. 477 (1963); Eskridge v. Washington State Bd. Of Prison Terms and Paroles, 357 U.S. 214 (1958); Griffin v. Illinois, 351 U.S. 12 (1956)). The state, however, “will not be required to expend its funds unnecessarily” to provide transcripts or other items that “will not be germane to consideration of the appeal.” Draper, 372 U.S. at 495; see also M.L.B. v. S.L.J., 519 U.S. 102, 112 n.5 (1996) (“an indigent defendant is entitled only to those parts of the trial

record that are germane to consideration of the appeal” (internal citations omitted)); Lane, 372 U.S. 477; Griffin, 351 U.S. 12. To demonstrate that the record is not sufficient, the defendant must show that any omissions from the record prejudiced his ability to pursue the appeal. State v. Polson, 92 Idaho 615, 620-21, 448 P.2d 229, 234-35 (1968) (distinguishing Martinez v. State, 92 Idaho 148, 438 P.2d 893 (1968)). See also United States v. Smith, 292 F.3d 90, 93 (1st Cir. 2002). To show prejudice Staples “must present something more than gross speculation that the transcripts were requisite to a fair appeal.” Scott v. Elo, 302 F.3d 598, 605 (6th Cir. 2002). Staples has failed to carry this burden.

Staples’ appeal is timely only from the district court’s January 10, 2011 Order Relinquishing Jurisdiction (R., pp.160-62), and its April 4, 2011 order denying Staples’ Rule 35 motion (R., p.182). Staples argues that the Idaho Supreme Court denied him due process and equal protection by denying his motion to augment the appellate record with as-yet unprepared transcripts of his April 2010 admit/deny hearing and his August 2010 disposition hearing (Appellant’s brief, pp.4-13), but he has failed to explain, much less demonstrate, how transcripts of those hearings are necessary to decide the only issues over which this Court has jurisdiction on this appeal. There is no evidence that the district court had such transcripts either when it relinquished jurisdiction in January 2011 or when it denied Staples’ Rule 35 motion in April 2011, nor is there any indication that the court relied upon anything said at the previous hearings as a basis for its decisions to relinquish jurisdiction and deny Rule 35 relief. Because the as-yet unprepared transcripts were never presented to the

district court in relation to the jurisdictional review and Rule 35 proceedings, they were never part of the record before the district court and are not properly considered for the first time on appeal. See State v. Mitchell, 124 Idaho 374, 376 n.1, 859 P.2d 972, 974 n.1 (Ct. App. 1993) (in rendering a decision on the issues raised on appeal, the appellate court is “limited to review of the record made below” and “will not consider new evidence that was never before the trial court”); see also Huerta v. Huerta, 127 Idaho 77, 80, 896 P.2d 985, 988 (Ct. App. 1995) (“It is not the role of this Court to entertain new allegations of fact and consider new evidence.”). In short, Staples has failed to show how the requested transcripts of hearings held in connection with the disposition of his prior probation violations are relevant to any issue arising from the subsequent relinquishment of jurisdiction and the denial of Rule 35 relief, the only issues over which this Court has jurisdiction on appeal.

The state recognizes the Court of Appeals’ statement in State v. Hanington, 148 Idaho 26, 28, 218 P.3d 5, 8 (Ct. App. 2009), relied on by Staples (Appellant’s brief, p.10), that appellate “review [of] a sentence that is ordered into execution following a period of probation” is based “upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of probation.” There are, however, two reasons why Hanington does not support Staples’ claim of entitlement to the requested transcripts. First, Staples’ appeal is not timely from the district court’s August 2010 order revoking his probation and, as such, Staples cannot directly challenge the sentence that was ordered into execution following the period of

probation. Second, and more importantly, Hanington does not stand for the proposition that a merits-based review of a trial court's decision to order a sentence executed following either a period of probation or a period of retained jurisdiction requires preparation and inclusion in the appellate record of transcripts of every hearing over which the trial court presided. To the contrary, the law is well established that, absent a showing that evidence was presented at prior hearings, and/or that the district court relied on such evidence in reaching its decision to revoke probation or relinquish jurisdiction, an appellant is not entitled to transcription at public expense of every hearing conducted before the date probation was finally revoked or jurisdiction was relinquished. Mayer v. City of Chicago, 404 U.S. 189, 194 (1971) (state is not "required to expend its funds unnecessarily" where "part or all of the stenographic transcript ... will not be germane to consideration of the appeal" (citation and internal quotations omitted)); Draper, 372 U.S. at 496 ("[T]he fact that an appellant with funds may choose to waste his money by unnecessarily including in the record all of the transcripts does not mean that the State must waste its funds by providing what is unnecessary for adequate appellate review."); see also Strand, 137 Idaho at 462-63, 50 P.3d at 477-78 (indigent appellant challenging denial of Rule 35 motion not entitled to transcription at public expense of Rule 35 hearing at which no evidence was presented).

Although there may be some circumstances that require inclusion in the appellate record of transcripts of prior hearings to fully review a trial court's decisions to relinquish jurisdiction and deny Rule 35 relief, Staples has failed to

show that any such circumstances apply here. Staples has failed to point to anything in the record that would indicate that what happened at the April 2010 admit/deny hearing and the August 2010 disposition hearing was considered or played any role in the court's decisions in January and April 2011, respectively, to relinquish jurisdiction and deny Staples' Rule 35 motion for reduction of his underlying sentence. As such, Staples has failed to show that such transcripts are necessary to complete an adequate record on this appeal.

Citing Mayer v. City of Chicago, 404 U.S. 189 (1971), Staples claims that he is only required to make a "colorable argument" that he needs an "item" or "items" to complete a record before the burden transfers to the *state* "to prove that the requested items are not necessary for the appeal." (Appellant's brief, p.9.) He also argues, with no citation whatsoever, that "to meet the constitutional mandates of due process and equal protection," the state must provide him (and all indigent defendants) with whatever appellate record he desires unless the *state* proves that "some or all of the requested materials are unnecessary or frivolous." (Appellant's brief, p.6; see also p.4 ("The only way a state can constitutionally preclude an indigent defendant access to a requested transcript is if the State can prove that the transcript is irrelevant to the appeal.").) No reading of Mayer supports these legal arguments.

Mayer was convicted on non-felony charges punishable only by a fine and he appealed, challenging the sufficiency of evidence and asserting a claim of prosecutorial misconduct. Id. at 190. The appellate court denied his request for a trial transcript at government expense on the basis of a local rule providing that

verbatim transcripts of trial proceedings would be provided at government expense only for felonies. Id. at 191-93. The issue was not whether Mayer was entitled to a record of his trial, but whether he was entitled to a verbatim transcript of his trial. Id. at 193. The Court noted it had addressed a similar issue in Draper v. Washington, 372 U.S. 487 (1963), where the Court held that the government need not provide transcripts that were not “germane to consideration of the appeal, and a State will not be required to expend its funds unnecessarily in such circumstances.” Mayer, 404 U.S. at 194 (quoting Draper, 372 U.S. at 495-96). However, “the State must provide a full verbatim record where that is necessary to assure the indigent as effective an appeal as would be available to the defendant with resources to pay his own way.” Id. at 195. “Moreover, where the grounds of appeal, as in this case, make out a colorable need for a complete transcript, the burden is on the State to show that only a portion of the transcript or an ‘alternative’ will suffice for an effective appeal on those grounds.” Id.

Thus, if it is not clear on the existing record, an indigent appellant must establish that a record of certain “proceedings” is germane to the appeal. Id. at 194. Only after the germaneness of the requested record of the proceedings is established and a colorable need for a verbatim record is shown by the appellant will the burden shift to the state to demonstrate that a partial transcript or some record other than a verbatim transcript will be adequate. Id. at 194-95. See also Britt v. North Carolina, 404 U.S. 226, 227-28 (1971) (in deciding whether requested record necessary court should consider the “value of the transcript to

the defendant in connection with the appeal,” but standard does not require “a showing of need tailored to the facts of the particular case” and the court may take notice of the importance of a transcript).

Here the proceedings challenged on appeal are the relinquishment of jurisdiction and the denial of Staples’ Rule 35 motion in April and August 2011, respectively. The record related to the district court’s decisions is already complete because all of the evidence considered by the district court is before the appellate court. (See, e.g., 5/29/08 PSI; 6/3/08 Domestic Battery Eval.; 10/3/08 Mental Health Report; 2/25/09 APSI (prepared after first rider); R., pp.137-40 (12/29/09 Report Of Probation Violation); 7/12/10 PSI (updated PSI prepared in connection with probation violation proceedings); State’s Exhibit A (letter from Staples to victim – only evidence presented at 8/2/10 probation violation disposition hearing (R., pp.147-148)); 11/12/10 APSI (prepared after second rider).) It is Staples’ appellate burden to establish that the requested transcripts are necessary to create an adequate appellate record to review the court’s orders relinquishing jurisdiction and denying his Rule 35 motion. The augmentations he sought, however, were of never before prepared transcripts of hearings held several months before the district court rendered the decisions that are at issue in this case. Nothing in the record even suggests that the requested transcripts (or anything contained therein) were before the district court in relation to the jurisdictional review and Rule 35 proceedings. Because Staples failed to make a showing of germaneness and colorable need for the requested transcripts, there is no burden on the state. Because all of the evidence before

the district court is in the appellate record, that record is adequate for appellate review, and Staples has failed to establish a violation of his due process rights.² Strand, 137 Idaho at 463, 50 P.3d at 478.

Staples has also failed to establish that denial of his request to augment the record on appeal with irrelevant transcripts denied him equal protection. Staples cites to several cases where criminal defendants were denied appellate records *because of their indigence*. (See Appellant's brief, pp.6-11 (citing, e.g., Griffin v. Illinois, 351 U.S. 12 (1956); Draper v. Washington, 372 U.S. 487 (1963); Lane v. Brown, 372 U.S. 477 (1963)).) However, there is nothing in the record that in any way indicates that the Idaho Supreme Court denied Staples' request for transcripts solely because he is indigent. In fact, Staples' motion would have properly been denied even if he had the funds to pay for the transcripts. The Idaho Appellate Rules require *any* party seeking augmentation to set forth a ground sufficient to justify the augmentation requested. I.A.R. 30. Staples' motion to augment failed because he failed to meet this minimal burden, imposed upon all parties, of showing that the transcripts were necessary or even helpful in addressing appellate issues. The Idaho Supreme Court's order

² As a component of his due process claim, Staples argues that the denial of his motion to augment the record with the requested transcripts has deprived him of effective assistance of counsel on appeal. (Appellant's brief, pp.11-13.) Because, for the reasons already explained, Staples has failed to show that the requested transcripts are necessary, or even relevant, for appellate review of the district court's orders relinquishing jurisdiction and denying his Rule 35 motion, there is no possibility that the denial of the motion to augment has deprived Staples of effective assistance of counsel on this appeal.

properly denied the motion to augment because Staples failed to make a showing that any appellant – indigent or otherwise – would be entitled to augment the record as requested. There is no reason to believe that the motion to augment would have been granted had Staples been paying for the requested transcripts; the rule applies to all parties, not just the indigent.

Staples has failed to show that the denial of his motion to augment was in any way influenced or decided by his indigence, nor has he demonstrated that the requested transcripts are necessary to complete a record adequate to review any issue over which this Court has jurisdiction on appeal. To the contrary, the record amply demonstrates that Staples' motion to augment was properly denied because he failed to show that the transcripts he requested were necessary for adequate review of the district court's decisions to relinquish jurisdiction and deny Staples' Rule 35 motion for a reduction of his sentence. Because Staples has failed to show his due process and equal protection rights were implicated, much less violated, by the denial of his motion to augment, he has failed to show any basis for relief.

II.

Staples Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A. Introduction

After Staples pled guilty to felony domestic battery, the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.88-94.) Following the period of retained jurisdiction, the district court gave Staples the opportunity for probation (R., pp.104-09, 111-18),

but Staples squandered that opportunity within a matter of months by failing to attend required aftercare and domestic violence treatment programs and changing residences without notifying his probation officer, thus preventing his probation officer from supervising him for at least two months (R., pp.119-20, 137-40, 144-45; 7/12/10 PSI, pp.1-2, 5-6). Despite Staples' demonstrated unwillingness or inability to comply with the terms of probation, or even to be supervised at all, the district court exercised leniency and retained jurisdiction a second time, thereby giving Staples a second opportunity to prove he was amenable to community supervision. (R., pp.147-52.) Rather than take advantage of that opportunity, Staples "consistently failed to program during his entire time at NICI," leading to a recommendation that the district court relinquish jurisdiction. (11/12/10 APSI, p.5.) The district court followed that recommendation and relinquished jurisdiction, concluding that Staples was "not ready for probation." (1/3/11 Tr., p.14, Ls.18-23; R., pp.158-62.) The court thereafter denied Staples' Rule 35 motion for reduction of sentence. (R., pp.163-65, 180-83.)

On appeal Staples argues that "[t]he district court's reliance on the APSI's relinquishment recommendation constituted error because it did not accurately reflect his performance while on his second rider." (Appellant's brief, p.15.) He also challenges the denial of his Rule 35 motion, contending the fixed portion of his sentence "is excessively harsh when it is viewed in light of [both] the new information" he provided with his motion and "the other mitigating factors" he claims are present in his case. (Appellant's brief, p.20.) Staples has failed to

establish an abuse of discretion. A review of the record supports the district court's determination, following the second period of retained jurisdiction, that Staples was not an appropriate candidate for probation, and Staples failed to present any new evidence entitling him to a reduction of his underlying sentence.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. Staples Has Failed To Establish That The District Court Abused Its Discretion By Relinquishing Jurisdiction

The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984). Contrary to Staples' assertions on appeal, a review of the record in this case supports the district court's determination that Staples was not a suitable candidate for probation, particularly in light of Staples' history of violent behavior, his failures to take advantage of rehabilitative opportunities and his abysmal performance during his second period of retained jurisdiction.

Staples is a violent individual. He was convicted of battery in 2005 and of carrying a concealed weapon in 2006. (5/29/08 PSI, p.4; 7/12/10 PSI, pp.3-4; Domestic Battery Eval., p.4.) Between November 2006 and July 2007, law enforcement responded on at least four separate occasions to reports of "Possible Domestic Disputes" between Staples and his then fiancée, Patsy Garcilazo. (5/29/08 PSI, pp.4-5; Domestic Battery Eval., pp.14-16.) As noted by the presentence investigator, "[a]rguments, pushing, name-calling and yelling [were] the common theme" of these calls. (5/29/08 PSI, pp.4-5.) The level of violence escalated significantly in December 2007, when Staples committed the instant offense. Specifically, after Patsy accused Staples of cheating on her, Staples shoved her over a couch, strangled her, threw her to the ground, held a knife to her throat and threatened to kill her. (5/29/08 PSI, p.2; Domestic Battery Eval., pp.3-6, 12-13.) Immediately thereafter, Staples picked up the juvenile female with whom Patsy had accused him of cheating and drove her to a friend's house where they hid from authorities for the next several days. (Domestic Battery Eval., pp.7, 11.) In an interview with police following his arrest, Staples claimed to have "blacked out" during the most recent incident with Patsy, but he "confessed to pushing her by her neck with one hand to get her to let go of him" and to threatening her with a kitchen knife. (Domestic Battery Eval., pp.12-13.) When asked why he did not hurt Patsy with the knife, Staples replied, "Heart. Her daughter was there." (Domestic Battery Eval., p.12.)

In both a Domestic Battery Evaluation and Mental Health Report prepared for sentencing, two separate evaluators opined that Staples minimized the extent

of both his assaultive behaviors and his anger problems. (Domestic Battery Eval., pp.19-20; Mental Health Report, p.2.) The domestic battery evaluator characterized Staples as having “narcissistic traits,” “poor control of over aggressive impulses,” and a tendency to “overreact in proportion to perceived provocation.” (Domestic Battery Eval., p.20.) The mental health evaluator likewise opined that Staples had poor insight and “problems managing anger and personality disorder issues.” (Mental Health Report, pp. 2, 5; see also p.1 (Staples’ “impairment is the result of anger management problems and personality problems”).) The domestic battery evaluator classified Staples as posing a “medium to high risk” to commit future acts of violence. (Domestic Battery Eval., p.19.) Contributing to this risk assessment were the facts that Staples “express[ed] little remorse” for his conduct, did “not appear motivated for treatment” and did “not believe he had a problem with anger management or domestic violence,” despite his involvement in documented “recurrent episodes of domestic violence.” (Domestic Battery Eval., p.19.) The mental health evaluator also assessed Staples as posing a “moderate risk” to reoffend, noting that “[w]ithout treatment especially in the area of anger management he is at risk of harming someone and ending up in Court system again.” (Mental Health Report, p.5.)

After reviewing the Domestic Battery Evaluation and Mental Health Report, the district court struck a balance between the need to protect society and the goal of rehabilitation by retaining jurisdiction and recommending that Staples receive anger management and cognitive based programming. (R.,

pp.91-92.) Staples participated in and satisfactorily completed several courses, including "A New Direction," Stress Management and Anger Management, during his first period of retained jurisdiction, but not without incident. (2/25/09 APSI, pp.1-4.) The staff and NICI noted that "Staples received a total of one alternative sanction, four written warnings, and four verbal warnings" during his time at NICI, and that "[a]t least four of these corrective actions involved 'anger' in one form or another." (2/25/09 APSI, p.3.) Despite these disciplinary issues, Staples received a recommendation for probation following his first period of retained jurisdiction, but with the express caveat that he "continue anger management through a domestic violence class" upon his release. (2/24/09 APSI, p.6.)

Consistent with NICI's recommendation, the district court placed Staples on probation with the requirement that he participate in all rehabilitative programs recommended by his probation officer, including anger management. (R., pp.104-09, 111-18.) Staples immediately violated the conditions of his probation by failing enroll in a 52- week domestic violence treatment program and by being removed from "New Directions Aftercare" for non-attendance. (R., pp.137-39.) He also absconded supervision. (R., pp.137-39.) Staples' probation officer recommended that Staples' sentence be executed, reporting:

"Mr. Staples was a difficult case to supervise, as he made no consistent effort to stay in contact with his probation officers. He never reported an employer to us. He missed scheduled appointments with me, and when he did finally report for a scheduled appointment in September 2009, he drove to my office without a license and was again cited for DWP. This, however, was not his only law enforcement contact, he reported at least two other times of being in a car with a friend who was pulled over.

Mr. Staples never began his Domestic Violence class, but began engaging in a romantic relationship, without permission of his probation officers. Further, he failed his New Directions aftercare course, for failure to attend, which was offered to him, free of cost at the probation office.

He then absconded in November 2009, having spent 7 months on supervision, but only having 3 face to face contact[s] with his probation officer

...

Mr. Staples was given the opportunity of a period of retained jurisdiction followed by probation. However, he has shown that left to his own devices, Mr. Staples continues to associate with persons involved in illegal activity, continues to drive without privileges, and failed to show motivation to gain employment or attend treatment, even when offered to him free of cost. His consistent lack of progress and overall inability to follow any of the requirements of society and the court order, lead me to recommend a period of incarceration. During this time he would be able to attend treatment such as cognitive self change."

(7/12/10 PSI, pp.5-6.) The presentence investigator concurred with the probation officer's assessment, stating, "I do not feel Mr. Staples would be successful in the community as he does not have stable residence, employment, and the desire to comply with the terms of his probation." (7/12/10 PSI, p.11.)

Despite Staples' demonstrated unwillingness or inability to comply with the terms of probation, and despite the probation officer's and presentence investigator's recommendations for incarceration, the district court exercised leniency in retaining jurisdiction a second time to afford Staples the opportunity to prove his amenability to community supervision. (R., pp.147-52.) Staples utterly failed to take advantage of that opportunity, however, as he failed to complete three of the four programs in which he was enrolled, including anger management, and consistently "demonstrated himself as unwilling to correct his

criminal thinking or to follow up on treatment that would help him correct it.” (11/12/10 APSI, pp.1, 3-5.) He amassed several informal sanctions during his second period of retained jurisdiction and, according to NICI staff, “displayed a significant deficit when it comes to showing an ability to learn from previous problems.” (11/12/10 APSI, pp.2-3.) He walked out of class, had missing and incomplete assignments, “was not willing to participate in the group discussions” or “process sessions,” and spent the “majority” of his class time “not engaged and appeared to be sleeping on occasion.” (11/12/10 APSI, pp.2-3.) Staples “completed his Personal Life Portfolio and received a positive review in his work area.” (11/12/10 APSI, p.5.) NICI staff determined, however, that those accomplishments did not outweigh Staples’ “negative behavior” and his consistent, willful failure to program. (11/12/10 APSI, pp.3-5.) Ultimately, the staff concluded that Staples did “not demonstrate[] the necessary skills to facilitate his successful return to his community” and was “not an appropriate candidate for probation.” (11/12/10 APSI, p.3.) In light of this information, the district court acted well within its discretion in relinquishing jurisdiction.

Staples argues on appeal that the district court erred in relying on the information contained in the APSI as the basis for its decision to relinquish jurisdiction, contending that the APSI “did not accurately reflect his performance while on his second rider.” (Appellant’s brief, p.15.) Although given the opportunity, Staples did not submit a written statement in conjunction with or in response to the information contained in the APSI. (See 11/12/10 APSI, p.5.) He testified at the jurisdictional review hearing that some of his failure to program

was due to an issue with his contact lenses. (1/3/11 Tr., p.5, Ls.2-13.) As acknowledged by Staples on appeal, however, he specifically told NICI staff about the contact lens issue, and that information was contained in the APSI. (11/12/10 APSI, p.2.) That Staples believes the district court should have assigned more weight to that information does not render the APSI's portrayal of Staples' performance during his second period of retained jurisdiction inaccurate.

The only other information pointed to by Staples to support his claim of inaccuracy in the APSI is his testimony that he performed several hours of community service that went unnoted by NICI staff in recommending to the court that it relinquish jurisdiction. (Appellant's brief, p.16; 1/3/11 Tr., p.9, L.17 – p.10, L.2.) A log of Staples' community service hours is contained in the APSI, however (see NICI Community Service Hours log, attached to 11/12/10 APSI), as is an express recognition by NICI staff that Staples performed well and "received a positive review in his work area" (11/12/10 APSI, pp.4-5). Again, that the district court (and NICI staff) found that Staples' negative behavior and failure to program outweighed any positive strides he made during his second period of retained jurisdiction does not show that the information contained in the APSI was inaccurate.

The district court considered all of the relevant information and reasonably determined that Staples was not an appropriate candidate for community supervision. This conclusion is supported by Staples' history of violent behavior, the risk he presents to the community, and his continued resistance to treatment.

Given any reasonable view of the facts, Staples has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

D. Staples Has Failed To Establish That The District Court Abused Its Discretion By Denying His Rule 35 Motion For Reduction Of His Sentence

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). Staples did not appeal his underlying sentence. Therefore, to prevail on his claim that the district court abused its discretion by denying his Rule 35 motion, Staples must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id.; see also State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008) (absent the presentation of new evidence, an appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence). Staples has failed to satisfy his burden.

The only “new” information Staples submitted in support of his Rule 35 motion were his unsubstantiated assertions that the “mother of [his] children” had rheumatoid arthritis and needed help taking care of the kids; he planned to take and finish “more” anger management, domestic violence and parenting classes; and he had guaranteed employment at two restaurants in his community. (R., p.164; 3/21/11 Tr., p.10, L.23 – p.11, L.5, p.14, Ls.10-16.) The district court considered this information and rejected it as a basis for reducing Staples’ sentence, noting that Staples had “been given multiple opportunities, including

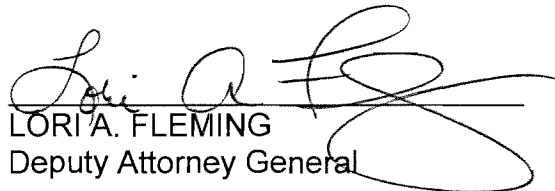
two riders” and a period of probation, and had failed to take advantage of the treatment opportunities offered to him. (3/21/11 Tr., p.14, L.21 – p.15, L.23.) The court noted, “[T]he fundamental issue remains the same; that he’s not completed the domestic violence and anger management that he needs to do. And he didn’t do well on the last rider where I would have thought he would have given every possible effort given what he was faced with.” (3/21/11 Tr., p.15, Ls.6-12.) The district court’s concern regarding Staples’ failure to take advantage of treatment opportunities was well-founded, particularly since, as pointed out by the prosecutor, “the mother of [Staples’] children” referred to by Staples in his Rule 35 motion, is the victim in this case and is the same individual with whom Staples has a history of domestic violence and no contact order violations. (See 3/21/11 Tr., p.12, L.15 – p.13, L.4.)

The district court considered all of the relevant information and reasonably determined that Staples failed to show through his “new” information that his sentence was excessive. Staples has failed to establish that the district court abused its discretion in denying his Rule 35 motion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's orders relinquishing jurisdiction and denying Staples' Rule 35 motion for reduction of sentence.

DATED this 2nd day of April 2012.

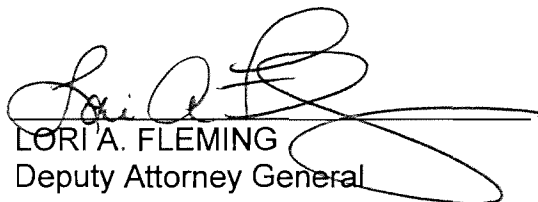

LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of April 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SHAWN F. WILKERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.


LORI A. FLEMING
Deputy Attorney General

LAF/pm